

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2003-275

July 18, 2003

INDUSTRIAL ENERGY CONSUMER GROUP  
Request for Commission Investigation  
Into the Continuation of Asset Sale Gain  
Account-Based Rate Relief

ORDER REJECTING  
STIPULATION AND  
DIRECTING RATE  
MITIGATION – PART II

WELCH, Chairman; DIAMOND and REISHUS,<sup>1</sup> Commissioners

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**I. SUMMARY**

Through this Order, we reject a Stipulation presented in this proceeding and direct broad-based rate mitigation to Maine's businesses as specified below.

**II. BACKGROUND**

On April 15, 2003, the Industrial Energy Consumer Group (IECG) filed a petition seeking a continuation of the recently expired .45 cents/kWh rate mitigation for Central Maine Power Company's (CMP) LGS-ST and LGS-T classes. The rate mitigation was funded through CMP's Asset Sale Gain Account (ASGA) and was part of a stipulation approved by the Commission in February 2002. *Investigation of Central Maine Power Company's Stranded Cost Revenue Requirement, Order Approving Stipulation*, Docket No. 2001-232 (Feb. 15, 2002). Pursuant to that stipulation, the rate mitigation expired on February 28, 2003. The IECG petition seeks a continuation of the .45 cents/kWh rate mitigation for the one-year period March 1, 2003 through February 28, 2005. The IECG states that the cost of the rate mitigation would be approximately \$7.5 million.<sup>2</sup>

In its petition, the IECG asks the Commission to continue the rate mitigation in recognition of the continuing economic and market recession in Maine and in the nation, and rapidly increasing market prices for power. Specifically, the IECG states that the termination of the .45 cents/kWh mitigation comes at a time when CMP's industrial customers are not facing improved power market conditions, but when the market has taken a sudden turn towards significantly increased prices. Additionally, the IECG states that these increases are occurring at a time when the regional and national

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<sup>1</sup> Commissioner Reishus did not participate in this decision in that she joined the Commission after the deliberations on this matter. Former Commissioner Nugent voted on this during deliberations on June 18, 2003, but left the Commission before the issuance of this written decision.

<sup>2</sup> During the discovery process in this proceeding, CMP indicated that the cost of the IECG rate mitigation proposal would be approximately \$9.1 million.

economic downturn has resulted in one of the worst market slumps in Maine's forest and paper product industries in recent memory.

During a May 1, 2003 case conference, the Hearing Examiner granted the petitions for intervention of the Public Advocate, CMP and the Independent Energy Producers of Maine (IEPM). The Advisory Staff and the parties agreed to a discovery process and to hold several technical conferences for the purpose of allowing the IECG to present its justification for the continued rate mitigation and for other parties to present their perspectives.

On May 2, 2003, Governor Baldacci submitted a letter to the Commission, urging approval of the IECG's request due to the particularly damaging effect that the economic recession has had on Maine's manufacturing sector. During one of the technical conference, Maine's State Economist appeared on behalf of the Governor to present information on the economic circumstances of Maine's manufacturing sector.

During the technical conferences, the parties expressed various concerns and discussed several alternative approaches. In particular, the parties discussed the propriety of determining rates based on the relative economic conditions of various customer groups, whether rate mitigation could be more appropriately targeted, and whether a longer-term approach would be superior to the one-year proposal.

On June 16, 2003, the Commission received a Stipulation executed by the IECG and the Public Advocate. The Stipulation would resolve all issues in the proceeding by providing rate relief to certain large private-sector, energy intensive manufacturing and ski industry customers of CMP. Specifically, the Stipulation provides for a 0.3 cents/kWh rate reduction for a two-year period beginning March 1, 2003 for all private-sector customers of CMP that employ at least 100 people, use at least 5 million kWh annually and have a demand in excess of 400 kW. The stipulated rate mitigation proposal was designed to have approximately the same cost as the IECG's original proposal. CMP and the IEPM indicated that they neither supported nor opposed the Stipulation.

On June 17, 2003, the Commission held a hearing on the Stipulation, as well as other issues relevant to the IECG's rate mitigation request. During the hearing, Chairman Welch presented a proposal whereby all commercial and industrial (C&I) customers (except for the small commercial class) would receive the same rate mitigation. Parties generally expressed concern regarding the proposal, primarily because it would exhaust the ASGA.

The Commission deliberated this matter on June 18, 2003 and issued a Part I Order on June 19, 2003. In this Part II Order, the Commission presents the rationale for its decision.

### III. DISCUSSION

For the reasons discussed below, we reject the Stipulation submitted in this proceeding. Instead, we direct rate mitigation of 0.3 cents/kWh for all CMP's medium and large C&I customers (MGS, IGS, and LGS rate classes) for the period July 1, 2003 through February 28, 2005. The rate mitigation shall not reduce stranded cost rates below 0 cents/kWh.<sup>3</sup>

#### A. Standard for Review of Stipulations

When reviewing stipulations, we consider whether: 1) the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement; 2) the process that led to the stipulation was fair to all parties; and 3) the stipulated result is reasonable and not contrary to legislative mandates. *Central Maine Power Company: Proposed Increase in Rates, Detailed Opinion and Subsidiary Findings*, Docket No. 92-345(II) (Jan. 10, 1995). We have also recognized an obligation to ensure that the overall stipulated result is in the public interest. *Central Maine Power Company: Request for Approval of Alternative Rate Plan, Order Approving Stipulation*, Docket No. 99-666 (Nov. 16, 2000).

We conclude that the first two criteria are met. This case essentially involves the allocation of the ASGA among various customers groups. The IECG represents the interests of large industrial users, while the Public Advocate is obligated by statute to represent the interests of small business and residential consumers (as well as other consumers whose interests are not adequately represented). 35-A M.R.S.A. § 1702-A. Thus, we conclude that the parties joining the Stipulation represent a sufficiently broad spectrum of interests. We also find that the second criterion is met in that there has been no indication or suggestion that any part of the process that led to the Stipulation was unfair to any party.

#### B. Stipulated Result

We therefore focus on the stipulated result to determine whether it is reasonable and in the public interest. In doing so, we consider the justification offered for rate mitigation. In its initial petition, the IECG essentially provided two grounds supporting its proposal. The first ground is that generation supply prices remain high and can be expected to increase through the near term. This rationale for rate mitigation, then, is based on the traditional ratemaking concepts of maintenance of rate

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<sup>3</sup> The Part I Order issued on June 19, 2003 specified that "rates" would not be reduced below zero, but did not specify which rates. In this Order, we clarify our intent that stranded cost rates not be reduced below zero. This is the same floor that was included in the stipulation that resulted in the 0.45 cents/kWh mitigation for the period March 2003 through February 2003 (Docket No. 2001-232).

stability and avoidance of rate shock.<sup>4</sup> The second ground is not based on traditional ratemaking criteria, but rather on general economic conditions in the State and the relative financial circumstances of certain customer types. More specifically, the IECG's second rationale is that Maine's largest manufacturing companies have been particularly impacted by the nation's economic downturn and that the plight of these companies is of particular importance to the State in that they employ a large number of people.

We address first the rate stability/rate shock rationale. A review of the record indicates that some of the customers in the LGS-T and LGS-ST classes are paying relatively high generation prices, while others are paying relatively low prices.<sup>5</sup> A comparison of the rates paid by the larger customers with the average rates recently paid by the smaller C&I classes cannot support a finding that the larger classes are in any more need of rate mitigation for rate stability or avoidance of rate shock purposes than the other C&I classes. In addition, although the Stipulation attempts to more narrowly target the rate mitigation than the original petition, it does not do so in a manner that identifies customers paying high supply prices. For example, there is no requirement that a customer demonstrate that it is paying relatively higher supply prices as a condition to receiving rate mitigation. For these reasons, we cannot find that the stipulated result provides a reasonable mechanism to promote rate stability or mitigate rate shock.

With respect to the general economic need rationale, the stipulating parties have made an effort to rationally target rate mitigation to those customers that, in their view, are most in need of assistance due to general economic conditions and their importance to the State's economy. If we were to accept the proposition that electricity rates should be based on such criteria (which we have not yet done expressly), the Stipulation may be considered a reasonable rate mitigation approach. However, for the following reasons, we are reluctant to establish rates based on our judgment as to which customers or customer groups are most in need or are of relatively greater importance to the State.

First, the expertise of the Commission is in economic regulation, not the provision of general economic assistance. Accordingly, we have no particular insight

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<sup>4</sup> As pointed out in the IECG petition, the Commission previously ordered rate mitigation to be funded from the ASGA on two occasions. On both occasions the rate mitigation was ordered on rate stability/rate shock grounds. *Investigation of Central Maine Power Company's Stranded Cost Revenue Requirement, Order Approving Stipulation*, Docket No. 2001-232 at 9-10 (Feb 15, 2002); *Investigation Into Central Maine Power Company's Stranded Cost, Transmission and Distribution Revenue Requirements, And Rate Design, Order*, Docket No. 97-580 at 3-4 (Mar. 28, 2001)

<sup>5</sup> The length and terms of supply contracts vary among customers. To the extent that customer contracts extend a year or more into the future, there will be no customer impact from current short-term trends in supply prices.

into which sectors should receive economic assistance on the grounds that they have been particularly hard hit by the current economic downturn or are of relatively greater importance to the State's economy. Such determinations are more appropriately made by the Legislature. As economic regulators, it is difficult for us to assess whether the large manufacturing or ski industries are of greater importance to the State than, for example, the tourist or health care industries. Similarly, it is difficult for us to determine whether providing aid to one company that employs 100 people is more important than providing aid to two companies that employ 50 people (or, for that matter, 100 companies that employ one individual).

Second, we are unable to conclude that electricity rates are of substantially greater importance to large users than to smaller entities that use less electricity.<sup>6</sup> In our day-to-day responsibilities, we often hear from smaller business entities that are struggling economically to stay in business and for which electric costs are a substantial burden.

Finally, it is difficult to determine whether the type of assistance that would be provided for in the IECG's original proposal or the Stipulation would have the intended effect of deterring large manufacturers from closing or reducing their operations in Maine. Put another way, electricity rate reductions are not a particularly effective or fair means to provide economic assistance. This is because the amount of assistance provided to customers would necessarily depend on their electricity usage, and not on their level of need. For example, rate mitigation could be provided to customers who are not financially in need of assistance, while customers who are in need may not be provided enough assistance to make a difference. All Maine transmission and distribution (T&D) utilities have the ability to reduce their rates if necessary to prevent a customer from reducing or ceasing operations in the State, and CMP, in particular, has been quite active in this regard. Indeed, many of the customers who would receive mitigation pursuant to the Stipulation already have negotiated such special contracts with CMP. These types of bilateral negotiations between customers and the T&D utility are a much more efficient approach to help ensure that businesses do not leave the State or reduce production due to the current level of electricity rates than broad-based rate mitigation of the type proposed in the Stipulation.

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<sup>6</sup> The IECG has noted on several occasions that the lack of intervention by smaller customers or smaller customer groups means that such customers are not in need of rate mitigation or do not care if larger customers receive a rate break at their expense. We reject this notion. It is economically worthwhile for the largest of customers to hire counsel and consultants to pursue rate reductions because they pay relatively high amounts in absolute dollars for electricity than smaller customers. This, however, does not mean that smaller customers "do not care." It is precisely because smaller customers cannot generally afford to participate in Commission proceedings that the Legislature created the Office of the Public Advocate to represent their interests.

It is for these reasons that we are unable to conclude that the stipulated approach of determining T&D rates based on relative economic need or importance to the State's economy of particular customers is in the public interest.<sup>7</sup> We therefore decline to approve the Stipulation as presented.

C. Alternative Mitigation

Although we do not accept the Stipulation, we are aware of the impact that the ongoing economic downturn has had on Maine businesses in general. We also recognize that electricity supply rates in the competitive market remain relatively high at a time when many Maine businesses are struggling to adapt to the consequences of industry restructuring. For example, except for the smallest commercial customers, which have been grouped with residential customers for purposes of the standard offer service, Maine's businesses have been exposed to greater electricity price volatility than under the prior regulatory structure. Thus, we conclude that this would be an advantageous time to provide Maine businesses with some rate mitigation in the form of reduced stranded cost rates.

However, to avoid raising rates to residential customers or altering any existing amortization schedules, we prefer to work within the current ASGA balance.<sup>8</sup> The current balance in the ASGA would allow us to order rate mitigation similar to that proposed in the Stipulation to all C&I customers in CMP's MGS, IGS, and LGS classes. This approach would not include CMP's small commercial class (SGS). However, this class has had the benefit of standard offer service for residential and small commercial customers administered in a manner that has resulted in lower and more stable supply prices than for other customer groups. Consequently, the larger C&I customers have had a higher burden in facing the new electricity competitive markets than the small C&I customers.

Taking into account all relevant circumstances, we order rate mitigation to be funded from the ASGA for all C&I customers in CMP's MGS, IGS, and LGS classes. The rate mitigation shall be a 0.3 cents/kWh reduction in stranded cost rates. The rate mitigation shall be effective beginning July 1, 2003 and extend through February 2005. The rate mitigation shall not reduce stranded cost rates of any customer below zero.

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<sup>7</sup> The fact that both the IECG's original proposal and the Stipulation would have funded rate mitigation from the ASGA is of little consequence in determining whether rates should be based on relative economic considerations. There may be some misunderstanding as to the nature of the ASGA. The ASGA is not some sort of windfall that can be used for any purpose. The ASGA is the gain on sale of utility generating plants and must by law be used as an offset to stranded costs. 35-A M.R.S.A. § 3208(2). Although the Commission has substantial flexibility over the timing for which the ASGA is flowed back to ratepayers, the exercise is one of establishing stranded cost recovery and should thus be guided by sound ratemaking principles.

<sup>8</sup> There is approximately \$25 million in the ASGA.

Dated at Augusta, Maine, this 18<sup>th</sup> day of July, 2003.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
                                                 Nugent  
                                                 Diamond - See Attached Concurring Opinion

### Concurring Opinion of Commissioner Diamond

While I join in and fully concur with the Commission Order, I think it appropriate, particularly in light of the Administration's interest in this matter, to amplify my reasons for believing that it is not in the public interest for the Commission either to grant the IECG petition or accept the Stipulation.

For me, the threshold question in deciding whether to grant the petition or approve the Stipulation is not whether it is the right thing to do, but whether we are the right people to do it. My answer is no, because I believe that taking either action would amount to usurping a fundamental legislative function. In other words, I reject the Stipulation not because it necessarily represents bad policy, but because the Commission should not be making that determination in the first instance.<sup>9</sup>

This case is not really about electricity. It is true that the Stipulation invokes rate shock, but even assuming rate shock can last four years, a debatable proposition, that cannot be the real basis for the requested relief or the Stipulation would be greatly underinclusive. Indeed, some whose rates would be higher because of the Stipulation<sup>10</sup> are paying more for energy than some whose rates would be lower. For them, the Stipulation would exacerbate any rate shock they are experiencing. What underlies the Stipulation is not rate shock but a desire to provide relief to selected companies whose financial distress is said to be particularly damaging to Maine's economy. Thus, this is a matter of broad economic policy and not of electric regulation.

The Stipulation would directly benefit very few ratepayers. Fifty-two businesses would get the subsidy, with 70% of the total going to only 10 companies. The Commission is being asked to require all other Maine businesses – even if they are struggling and even if they have high electricity prices – to pay more so that these companies can pay less. And to do so we have to make the judgment that this transfer of wealth is in the best interest of the Maine economy.

I reject the notion that the Stipulation involves traditional utility rate design. While rate design may inevitably involve choosing among customer classes, it does not (or should not), in the absence of a clear legislative mandate, include a decision by the Commission that some customers will pay more and others less because the latter are deemed more important to the State than the former.

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<sup>9</sup> While the following comments focus on the Stipulation, they also apply in principle, if not in every detail, to the request in the IECG petition.

<sup>10</sup> The asset sale gain account is in the nature of a stranded gain used to offset stranded costs, with the latter regrettably being much greater than the former. As explained subsequently, the Stipulation would benefit only a small number of customers. For the others, the reduced amount available to offset stranded costs would effectively mean that they would eventually wind up paying higher stranded costs than would otherwise be the case.



More specifically, it does not include deciding that Maine's schools and hospitals should pay more so that a semiconductor company can pay less. It does not include deciding that the hotels and restaurants that serve our tourist trade should pay more so that a defense contractor can pay less. And, as noted in the Commission Order, it does not include deciding that two businesses that each employ 50 people should pay more so that one business that employs 100 people can pay less. For me, judgments of this nature are not rate design but rather economic policy formulation in the most fundamental sense.

It may be in Maine's best interest that our schools and hospitals, our hotels and restaurants, and our smaller manufactures pay more so that some large businesses can pay less, but that decision should not be made by unelected regulators. Transferring wealth on the ground that the recipients are more important to the State's welfare than the contributors is a political judgment of the first order. It should be made by, or at least pursuant to the clear direction of, those directly accountable to the people.<sup>11</sup>

If we approved this Stipulation, I would see no basis for denying relief to hospitals who come to us armed with evidence of financial distress and with the argument that health care cost escalation is the number one problem facing many businesses. How would we say no to our struggling university system when they point out that affordable, high quality education is the key to attracting the industries of the future? Would we turn down endangered family dairy farms on the ground that they are not of sufficient importance to the State?

Perhaps the distinction is that relief should only go to those who use a lot of electricity. But is it really for the Commission to decide that energy intensive industries should be subsidized by those using less energy?<sup>12</sup> Is that the right vision for the State, and more fundamentally, should the vision of three public utility commissioners chart Maine's economic future?

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<sup>11</sup> I am not only unwilling to assume that the absence of other ratepayers from this case means that, unlike the large industrial users, they do not care about their electric rates, but I fear that their absence from this and other cases that may affect them likely stems from a lack of the expertise and resources needed to effectively monitor and participate in Commission proceedings. Given the arcane nature of utility regulation, the Commission is a far less familiar body to most citizens than the State Legislature. Furthermore, the notion that the transfer of wealth from some citizens to others in the name of the public good should be carried out by those who are locally elected is reflected in the requirement in the Maine Constitution that all revenue bills originate in the House of Representatives. I am not prepared to arrogate to the Commission the type of authority denied even to the Maine Senate.

<sup>12</sup> One might also question whether giving relief only to the largest users – in effect creating a volume discount – is consistent with Maine's renewed emphasis on energy conservation.

Unlike the proposed Stipulation, the decision by the Commission to mitigate prices for all large and medium customers does not require a judgment as to the relative importance to the State of different customers or different customer classes. It rests on the very straightforward proposition that smaller customers have benefited from lower energy prices by virtue of the standard offer procured for them by the Commission. In keeping with the traditional approach to rate shock, the demarcation line is based entirely on the energy costs of the different classes.

Let me emphasize that there is nothing improper about either the petition or the Stipulation. The problem is that the request for relief was made to the wrong body.<sup>13</sup> It should be submitted to our elected representatives, and if they determine that the petitioners deserve relief in the form of lower electric rates underwritten by their fellow citizens, I am fully prepared to carry out that judgment.

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<sup>13</sup> As a secondary consideration, I also believe that the Stipulation is overly broad. If money is in effect to be taken from some and given to others in the name of the public good, it should be done in a way that takes the least money necessary to achieve the objectives. For reasons set forth in the Commission Order, the Stipulation fails that test.

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.